

Board of Adjustment

Minutes

City Council Chambers, Lower Level August 13th, 2013

Board Members Present:

Danette Harris – Chair
Trent Montague - Vice Chair
Tyler Stradling
Greg Hitchens
Mark Freeman
Wade Swanson
Chad Cluff

Board Members Absent:

None.

Staff Present:

Gordon Sheffield
Angelica Guevara
Mia Lozano-Helland
Kim Steadman
Wahid Alam
John Wesley
Kaelee Wison
Delphina Legah

Others Present:

Others.

The study session began at 4:35 p.m. The Public Hearing meeting began at 5:30 p.m. Before adjournment at 6:18 p.m., the following items were considered and recorded:

Study Session began at 4:35 p.m.**A. Zoning Administrator's Report:**

Mr. Sheffield reported on the status of the Sign Code update. Mr. Sheffield stated he will have the draft form by the end of the month and will give to the Board by electronic mailing.

B. The items scheduled for the Board's Public Hearing were discussed.**Study Session adjourned at 5:15 p.m.****Public Hearing began at 5:30 p.m.**

- A. Consider Minutes from the June 11th, 2013 Meeting a motion was made by Board member Freeman and seconded by Board member Montague to approve the minutes. Vote: Passed 7-0
- B. Elect a New Chair and Vice Chair a motion was made by Board member Hitchens and seconded by Board member Stradling to nominate Danette Harris as Chair and Trent Montague as Vice Chair. Vote: Passed: 7-0
- C. Consent Agenda a motion to approve the consent agenda as read was made by Board member Swanson and seconded by Board member Freeman. Vote: Passed 7-0

**Board of Adjustment Meeting
August 13th, 2013**

Case No.: BA13-033

Location: 1930 South Alma School Road

Subject: Requesting a Special Use Permit to allow a witness communication facility to exceed the maximum height allowed in the LC-PAD zoning district. (PLN2013-00278)

Decision: Continued to the September 10th, 2013 hearing.

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Swanson seconded by Board member Freeman to continue case BA13-033 to September 10th, 2013 hearing.

Vote: Passed (7-0)

**Board of Adjustment Meeting
August 13th, 2013**

Case No.: BA13-034

Location: 1445 West Southern Avenue

Subject: Requesting a Special Use Permit to allow the number of special events to exceed the maximum allowed in the LC zoning district. (PLN2013-00308)

Decision: Approved with Conditions

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Swanson and seconded by Board member Freeman to approve case BA13-034 with the following conditions:

1. *Compliance with the site plan and operation plan submitted except as modified by the conditions below.*
2. *Signage shall be contained to the boundaries of the Special Event area. Signage visible from outside the boundaries of the site shall not be displayed prior to nor after the dates of the Special Event (may include construction and break down days), as specified in the Special Event license.*
3. *Compliance with all requirements of the Development Services Division in the issuance of building permits.*
4. *Compliance with all requirements of the Business Services Department regarding application for and issuance of a Special Event License.*

Vote: Passed (7-0)

FINDINGS

1. Approval of this project will advance the goals and objectives of and is consistent with the policies of the [General Plan](#) and any other applicable City plan and/or policies;
2. The location, size, design, and operating characteristics of the approved project are consistent with the purposes of the district where it is located and conform with the [General Plan](#) and with any other applicable City plan or policies;
3. Approval of this project will not be injurious or detrimental to the adjacent or surrounding properties in the Fiesta Mall area, nor will the approved project or improvements be injurious or detrimental to the neighborhood or to the general welfare of the City; and
4. Adequate public services, public facilities and public infrastructure are available to serve the approved project.

**Board of Adjustment Meeting
August 13th, 2013**

Case No.: BA13-035

Location: 258 East Franklin Avenue

Subject: Requesting a Variance to allow an encroachment into the required side yard in the RS-6 zoning district. (PLN2013-00318)

Decision: Approved with Conditions

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Swanson seconded by Board member Freeman to approve case BA13-035 with the following conditions:

1. *Compliance with the site plan submitted, except as modified by the conditions listed below.*
2. *Provision of the removal of an encroachment into the ten-foot setback by an existing patio at the rear northeast corner of the residence.*
3. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*

Vote: Passed (7-0)

STAFF ANALYSIS/FINDINGS

1. The variance approved would allow the encroachment of an existing carport and storage room with a five-foot setback, where a ten-foot setback is currently required by the Zoning Ordinance. The proposal does not expand the building footprint or roofline beyond existing at that side of the home, which conformed to zoning regulations at the time. In addition, the variance has been requested due to a bedroom/bathroom addition proposal that requires code conformance for all structures on the property.
2. The subject site is lot 18 of the El May Villa amended. This subdivision was recorded by Maricopa County in April 1948. A site visit by staff determined that the majority of the residences in this subdivision were built with 5-foot side yard setbacks, or smaller.
3. As justification for the approved variance, the applicant has noted: 1) that the home was constructed in 1955 with a five-foot setback; 2) the existing carport and storage room setback is a pre-existing condition not created by the applicant; 3) strict compliance with setback requirements would deprive the applicant of the ability to make any modifications or additions to the residence; 4) the request does not grant special privilege unavailable to other similar zoned properties.
4. As approved, the five-foot encroachment of the carport and storage room requires the granting of a variance. The Board of Adjustment must find the following items are present to approve a variance:
 - a) *There are special conditions that apply to the land or building.*
 - b) *The special condition was pre-existing and not created by the property owner.*
 - c) *That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.*
 - d) *The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.*

Board of Adjustment Meeting
August 13th, 2013

5. Strict compliance with current setback requirements would deprive the property of privileges enjoyed by other properties within the RS-6 Zoning District that are allowed additions to their property. Further, the hardships (existing 5-foot setback for carport) that prevent compliance with Code standards was not self-imposed and reasonable options to comply with these Code requirements do not exist.
6. An added note to the property conditions; the residence was originally constructed with a one-car carport which was typical for the 1950s. Two spaces will be provided by tandem parking that has been approved by the Zoning Administrator.

**Board of Adjustment Meeting
August 13th, 2013**

Case No.: BA13-036

Location: 8357 East Warner Road

Subject: Requesting a Special Use Permit to allow a manufactured home to be used as a night watchman quarters in the AG-AF zoning district. (PLN2013-00338)

Decision: Approved with Conditions

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Swanson seconded by Board member Freeman to approve case BA13-036 with the following conditions:

1. *Compliance with the narrative and site plan provided, except as modified by the conditions below.*
2. *No person other than the night watchman or caretaker shall occupy the unit.*
3. *Drive access to the manufactured home shall be dustproofed by way of paving, concrete, gravel or decomposed granite. If gravel or decomposed granite is used, it shall be at minimum 2-inches deep, and shall have a border of wood or concrete to contain the material.*
4. *Two dustproof 9'-0" wide by 18'-0" long parking spaces shall be provided adjacent to the manufactured home.*
5. *Compliance with all requirements of the Development Services Division in the issuance of building permits.*

Vote: Passed (7-0)

FINDINGS

- 1.1 The site is 60 acres and is used as a dairy. Typical operation of the dairy requires multiple caretakers at all hours of the day.
- 1.2 The placement of a manufactured home outside of a manufactured home park or subdivision can be authorized with approval of a Special Use Permit for use by a night watchman or caretaker in the AG-AF zoning district.
- 1.3 The caretaker is the only person authorized to occupy the unit.
- 1.4 The site is surrounded by similar or more intense uses.
- 1.5 The dairy existed prior to annexation into the City and the replacement of manufactured home for use by a caretaker does not intensify the use on the site.
- 1.6 The use on the site conforms to the Agriculture base zone on the site.
- 1.7 The site is in conformance with the Zoning and it allows the dairy to continue operations and to employee caretakers on the site, therefore, it complies with the General Plan designation of Mixed Use Employment.
- 1.8 Approval of this request results in a minimal impact to the surrounding properties, and is compatible with and not detrimental to surrounding properties.

**Board of Adjustment Meeting
August 13th, 2013**

Case No.: BA13-037

Location: 22 South Mesa Drive

Subject: Requesting a Special Use Permit for a Comprehensive Sign Plan in the DC zoning district. (PLN2013-00336)

Decision: Approved with Conditions

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Swanson seconded by Board member Freeman to approve case BA13-037 with the following conditions:

1. *Compliance with the sign plan submitted, except as modified by the conditions listed below.*
2. *Any additional signage not identified with this Sign Plan will require modification to this Special Use Permit.*
3. *Compliance with all requirements of the Development Services Division with regard to the issuance of sign permits.*

Vote: Passed (7-0)

FINDINGS

- 1.1 The approved comprehensive sign plan (CSP) consists of (2) attached signs and continued use of a non-conforming detached sign. The attached signs are approved to be placed with one sign on the north elevation, and another sign on the south elevation. The aggregate area of all of the approved attached signage is 59 square-feet.
- 1.2 One 7'-4" high, 32 square foot existing monument sign and is the only monument sign for the project. This sign is existing and considered non-conforming because it exceeds the 5-ft high maximum for detached sign in the DC district.
- 1.5 The aggregate attached sign area and the total number of attached signs are within the maximum permitted in the DC Zoning District. In this district, attached signs are limited to a maximum of 2 signs and a maximum aggregate sign area of 120 square-feet.
- 1.6 The applicant has retained the existing monument sign. The DC Zoning District would allow one monument sign per street frontage (this site has 2 street frontages) at a maximum of 32 square feet and 5-feet high per sign. Only one sign would be approved, and it would be the existing sign adjacent to Mesa Drive.
- 1.7 The location visibility is from south bound traffic along Mesa Drive is limited because of the trees in the city park north of the site. The new attached signs and their location is essential to meet the needs of this business in Downtown.
- 1.9 The approved CSP would not be detrimental to the surrounding properties or the area in general.

**Board of Adjustment Meeting
August 13th, 2013**

Case No.: BA13-038

Location: 2800-2900 blocks of North Power Road, west side

Subject: Requesting a Special Use Permit to modify an existing Comprehensive Sign Plan in the LC-PAD zoning district. (PLN2013-00334)

Decision: Withdrawn

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Swanson seconded by Board member Freeman to withdraw case BA13-038.

Vote: Passed (7-0)

**Board of Adjustment Meeting
August 13th, 2013**

- Case No.:** BA13-039
- Location:** 1855 North Power Road
- Subject:** Requesting a Special Use Permit to modify an existing Comprehensive Sign Plan in the LC zoning district. (PLN2013-00345)
- Decision:** Approved with Conditions
- Summary:** This item was on the consent agenda and was not discussed on an individual basis.
- Motion:** It was moved by Board member Swanson seconded by Board member Freeman to approve case BA13-039 with the following conditions:
1. *Compliance with sign plan submitted, except as modified by the conditions listed below.*
 2. *Attached signs for the Safeway anchor tenant space to be limited to no more than eight, and the total sign area for the eight signs is to be limited to no more than 260 sq. ft.*
 3. *Any additional signage not identified with this Sign Plan will require modification of this Special Use Permit.*
 4. *Compliance with all requirements of Development Services in the issuance of sign permits.*
- Vote:** Passed (7-0)

FINDINGS:

- 1.1 The originally approved CSP allows eight signs and a total signage area of 260 sq. ft. The approved modification revises the location of one sign and changes the style of signage for the main "Safeway" sign.
- 1.2 As justification for the request the applicant has cited the tenant's wish to update logos and improve signage style.
- 1.3 The approved modification maintains the signage standards of the original CSP.

**Board of Adjustment Meeting
August 13th, 2013**

Case No.: BA13-040

Location: 1406 West 1st Street

Subject: Requesting: 1) a Variance to allow the reduction in the required number of covered parking spaces; and 2) a Variance to allow an encroachment into the required side yard in the RS-6 zoning district. (PLN2013-000354)

Decision: Approved with Conditions

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Swanson seconded by Board member Freeman to approve case BA13-040 with the following conditions:

1. *Compliance with the site plan and elevations submitted, except as modified by the conditions listed below.*
2. *Provision of a minimum garage depth of eighteen feet (18').*
3. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*

Vote: Passed (7-0)

FINDINGS

1. The existing home was constructed in 1954 with a one-car carport built 3'-8" from the side property line.
2. The home is approximately 1,400 s.f. in area on an 8,414 s.f. lot.
3. The only vehicular access to the lot is provided from the street frontage at the front of the lot.
4. The home was constructed in its current location without sufficient side yard width to allow vehicular access to the rear yard.
5. Strict compliance with setback requirements would require the removal of the structure that provides the only covered parking space on the lot.
6. The enclosure of the existing carport into a garage does not expand the area of the carport/garage.
7. The approved request does not involve an expansion or intensification of the home.
8. The enclosure of the carport into a garage helps bring the existing parking space to a closer degree of compliance with current parking requirements by providing a covered parking space.
9. No other homes in the neighborhood provide two covered parking spaces as all homes were constructed with a one-car carport.

Board of Adjustment Meeting
August 13th, 2013

Case No.: BA13-041

Location: 8035 East Brown Road

Subject: Requesting a Variance to allow a fence to exceed the maximum height allowed in the OC zoning district. (PLN2013-00333)

Decision: Approved with Conditions

Summary: This item was on the consent agenda and was not discussed on an individual basis.

Motion: It was moved by Board member Swanson seconded by Board member Freeman to approve case BA13-041 with the following conditions:

1. *Compliance with the approved site and landscape plans as submitted for zoning case# Z07-80, except as modified by the conditions listed below.*
2. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*
3. *Install plant materials along Brown Road in compliance with Zoning Ordinance Section 11-33-3 requirements for Perimeter Landscaping.*

Vote: Passed (7-0)

STAFF SUMMARY AND ANALYSIS

1. The approved variance would allow a 6' tall decorative wall within the required 30' front yard setback. As per Section 11-30-4, fences and freestanding walls have a maximum height in front yard is 3'-6" within the OC-Office Commercial district. A variance is needed for fences higher than 3-ft-6 inches. Zoning case Z07-80 approved the site plan, which did not indicate any screen wall along Brown Road. During the Plan Review process, the 6-ft high screen wall was added to the civil drawings without being added to the landscape plans. The intent of the proposed 6 feet tall screen wall is to provide greater security and noise barrier to the facility from Brown Road.
2. The justification provided by the applicant related to this request notes that this 6 feet tall wall was built per approved civil drawings without realizing that the height is not allowed per zoning district. The intention was not to build the wall in violation of approved landscape plan. During the plan review process original civil plans were revised for 6 feet tall wall. The wall was first built per civil plans and landscape plan was not updated accordingly.
3. Applicant provided existing developments in the vicinity along McKellips Road where taller walls exist with smaller setback.
4. As approved, the 6' tall wall located within the front setback requires the granting of a variance. The Board of Adjustment must find the following items are present to approve a variance:
 - a) *There are special conditions that apply to the land or building.*
 - b) *The special condition was pre-existing and not created by the property owner.*
 - c) *That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.*

Board of Adjustment Meeting

August 13th, 2013

d) The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.

5. Even though the site is zoned OC the assisted living land use is close to residential living. The project is oriented internally making the patios facing rear yards along Brown Road. So in a way it is like a residential subdivisions backing to arterial streets. The strict application of the Code would deprive the assisted living facility of the privilege afforded to residential communities in the area. In the same way, an approval of this variance would not constitute a special privilege to this facility since nearby properties already enjoy this same privilege.
6. Also the zoning ordinance front yard requirements along 6 lane arterials have reduced from 30 feet to 15 feet in current code. The existing wall is no longer within the required front yard per current code. This site is a transitional site plan, and according to the zoning code update, is required to be built according to the approved site plan, which includes the larger setback.

Board of Adjustment Meeting
August 13th, 2013

Case No.: BA13-032

Location: 256 East Broadway Road

Subject: Requesting a Special Use Permit to allow auto repair and vehicle sales in the DB-2 zoning district. (PLN2013-00247)

Decision: Continued to the September 10th, 2013 hearing

Summary: Jose Gomez, the applicant, presented the case to the Board. Mr. Gomez explained the request is for a Special Use Permit for vehicle sales to make money due to the economy and does not want to close his business.

Staff member, Angelica Guevara, presented the staff report and the recommendation of denial to the board.

Board member Montague asked Mrs. Guevara the height of the proposed screen wall. Mrs. Guevara stated the applicant proposed a six foot high wall and is a combination of masonry and rot iron. Mrs. Guevara stated staff recommended condition number 5 with solid masonry wall with solid gates in order to screen what occurs in the property.

Board member Harris added there is also a recommendation for landscaping. Mrs. Guevara stated the applicant provided a landscape plan with the intended improvements in the right-of-way area. Also staff added Condition No. 6 for clarification.

Board member Freeman asked Mr. Gomez how many vehicles would be on the property or how many are currently. Mr. Gomez responded there are five vehicles now and they are not parked in front of the building. Once the landscaping is complete he will display three vehicles for potential buyers. Board member Freeman asked how many vehicles he expects at any given time, the maximum amount. Mr. Gomez responded between 10 and 20 inside the property, once he receives the permits he will go to DMV for the paperwork to sell the vehicles.

Board member Stradling asked Mrs. Guevara condition number 3 puts a 5 year limit on the Special Use Permit if the intent is after 5 years both the sale and repair use have to cease. Mrs. Guevara stated that is not the intent, the intent would only be for vehicle display, for sales to end and auto repair to continue on site. The Board needs to clarify the recommended condition of approval if approved.

Gordon Sheffield stated the time limit would not preclude the applicant from applying for renewal. He clarified even though there is a time limit if for some reasons Mr. Gomez wants to continue that activity he could apply to renew the use permit after the end of the five years if the Board approves with a time limit.

Board member Stradling asked where is the location of the pole sign that needs to come down. Mrs. Guevara explained the location of the pole on the map.

Board member Freeman stated his concern is creating a car lot based on need for Mr. Gomez to earn some additional money to survive as a business owner. There is a potential

Board of Adjustment Meeting August 13th, 2013

to see 10 or 20 cars there and what we will create is an auto repair with car sales. Board member Freeman discussed the number of vehicles that can fit on the property. Mrs. Guevara clarified with the 2011 approval of the site plan it showed four parking spaces up front. There are some existing auto repair sites along Broadway Road further west of this site and none of those are authorized for vehicle sales as well. There are some vehicle sale lots further west of the site that are existing. Board member Freeman added so there is a separation between the two, vehicle sales and auto repair, not a combination of both. Mrs. Guevara confirmed.

Board member Harris inquired about the quantity of cars that can fit in the rear and navigate through to conduct repairs. Mrs. Guevara stated the gate and the fence would prevent customers from driving toward the rear of the property. The intent of the parking spaces is for customer parking and not for vehicular display. Mr. Gomez stated business would drop dramatically if the cars cannot be displayed in the front. The cars repaired are out the same day unless it is a major repair usually stays in the bay. It is a five bay shop, parking is in front of the office, has six entrances, and the shop is not busy all the time so can park in front of the shop as well. Board member Harris stated one of the recommendations says, "All display of sale vehicles to be behind the new block wall." Mr. Gomez stated that is a recommendation if he puts the cars behind the wall potential buyers will not see the cars unless he advertises. Board member Harris was concerned there was no place for anyone to park if they want to stop and see the cars. Mr. Gomez explained the size of the lot on the map where the customers can park.

Board member Swanson asked the remaining duration on his current lease. Mr. Gomez responded he is going month to month and has been there for eight years. Gordon Sheffield stated condition 2 would tie the Special Use Permit specific to the Applicant since he is leasing the property.

Board member Freeman asked Board member Hitchens about his input from the 2011 Special Use Permit request. Board member Hitchens responded he made the motion for approval. If the Board denies the case Mr. Gomez can still function as an auto repair shop.

Board member Stradling recalled from the last discussion he was opposed to display of cars in the front of the property. Board member Stradling stated there were two main reasons why the board felt comfortable approving the request in 2011. One reason was the economy to help business people out that resulted in the addition of a condition which was the Special Use Permit was to be unique to Mr. Gomez only. Second this was a transitional area from the downtown character of businesses to the character where there are car sales on lots and because it was questionable where that line ended and where it began, we resolved it in favor of Mr. Gomez to give him the benefit. This was before the City Council updated the plan.

Discussion ensued amongst the board members concerning the number of vehicles on the property and vehicular display area.

Board member Harris asked Mr. Gomez if he needs more time to consider the conditions of approval in the staff report. Mr. Gomez responded he would like to have more time because he would like to consider how not displaying cars in the front would affect his business.

Board of Adjustment Meeting
August 13th, 2013

Motion: It was moved by Board member Harris seconded by Board member Swanson to continue case BA13-032 to the September 10th, 2013 hearing.

Vote: Passed (7-0)

**Board of Adjustment Meeting
August 13th, 2013**

OTHER BUSINESS:

None

ITEMS FROM CITIZENS PRESENT

None

Respectfully submitted,

Gordon Sheffield, AICP CNU-a
Zoning Administrator

Minutes written by Delphina Legah, Office Assistant II